



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2012-0075]

[4500030114]

Endangered and Threatened Wildlife and Plants; Status Review for a Petition to List the Ashy Storm-petrel as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; initiation of status review and solicitation of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of an information collection period regarding the status of the ashy storm-petrel (*Oceanodroma homochroa*) throughout its range in the United States. The status review will include analysis of whether the ashy storm-petrel may be an endangered or

threatened species due to threats in any significant portion of the range of the ashy storm-petrel. Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the ashy storm-petrel throughout its range, or any significant portion of its range.

DATES: To be fully considered for the status review, comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for Docket No. FWS–R8–ES–2012–0075, which is the docket number for this rulemaking.

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0075; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *<http://www.regulations.gov>*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Mike Chotkowski, Bay-Delta Fish and Wildlife Office, 650 Capitol Mall, Eighth Floor, Sacramento, CA 95814; by telephone at 916-930-5603; or facsimile at 916-930- 5654.

SUPPLEMENTARY INFORMATION:

Public Comments

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the ashy storm-petrel. We request any additional information and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We are opening a 30-day information collection period to allow all interested parties an opportunity to provide information on the status of the ashy storm-petrel throughout its range, including:

(1) Information regarding the species' historical and current population status, distribution, and trends; its biology and ecology; and habitat selection.

(2) Information on the effects of potential threat factors that are the basis for a species' listing determination under section 4 (a) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of

the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) Inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

(3) Timing within year, type, and amount of human activities (for example, commercial and recreational fishing, tourism) and their impacts on ash storm-petrels at locations where ash storm-petrels are known or suspected to breed, including but not limited to: Van Damme Rock (Mendocino County); Bird, Chimney, and Double Point Rocks (Marin County); the Farallon Islands (San Francisco County); Castle and Hurricane Point Rocks (Monterey County); San Miguel Island, Castle Rock, Prince Island, mainland locations and offshore islets at Vandenberg Air Force Base, Santa Cruz Island, Santa Barbara Island, Sutil Island, and Shag Rock (Santa Barbara County); Anacapa Island (Ventura County); Santa Catalina Island and San Clemente Island (Los Angeles County); and Islas Los Coronados and Islas Todos Santos, Mexico.

(4) Projected changes in sea level along the coast of California during the 21st

century, specifically at the locations listed in (3) above and its impact on ashy storm-petrels.

(5) Elevations of known and suitable breeding habitat at the locations listed in (3) above.

(6) Projected acidification of oceanic waters of the California Current during the 21st century and its impact on ashy storm-petrels.

(7) Locations of oil tanker routes, and timing and frequency of oil tanker traffic along the coast of California and Northern Baja California, Mexico, and their impact on ashy storm-petrels.

(8) Nighttime observations of ashy storm-petrels, other storm-petrels, other nocturnal seabirds (for example, Xantus's murrelets (*Synthliboramphus hypoleucus*)), and other seabirds (for example, gulls (*Larus* sp.)) on or near boats (commercial or recreational) off of central and southern California and Baja California, Mexico.

(9) Measured and observed nighttime lighting, and timing within year of nighttime lighting, by boats (commercial and recreational) at locations listed in (3) above, and their impacts on ashy storm-petrels.

(10) Daily and seasonal activity patterns of ashy storm-petrels and avian predators

of ashy storm-petrels (for example, western gull (*Larus occidentalis*), burrowing owl (*Athene cunicularia*)) at breeding locations in general and, specifically, in relation to light intensity at night, and their impacts on ashy storm-petrels.

(11) Abundance and distribution of predators of ashy storm-petrels at ashy storm-petrel breeding locations.

(12) Observations of ashy storm-petrels or other storm-petrels at night on offshore oil platforms, or additional evidence that ashy storm-petrels are attracted to or have collided with offshore oil platforms.

(13) Locations of proposed offshore liquefied natural gas (LNG) facilities along the coast of California and Northern Baja California, Mexico, and their impacts on ashy storm-petrels.

(14) Evidence of organochlorine contamination of ashy storm-petrel eggs and birds.

(15) Ingestion of plastics by ashy storm-petrels, distribution and abundance of plastics in the California Current, and their impact on ashy storm-petrels.

(16) Military activities at sea and on islands off the coast of California and northern Baja California, Mexico, and their impacts on ashy storm-petrels.

(17) Factors that pose a threat to ashy storm-petrels (those listed above, and otherwise) and the potential cumulative effects of these factors and their impacts on ashy storm-petrels.

Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, because section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.” At the conclusion of the status review, we will issue a new 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information and materials concerning this finding by one of the methods listed in the **ADDRESSES** section.

Before including your address, phone number, e-mail address, or other personal identifying information in your information, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Bay Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding. This notice initiates our status review.

On October 16, 2007, we received a petition from the Center for Biological Diversity, requesting that we list the ashy storm-petrel as a threatened or endangered species throughout its range and that we concurrently designate critical habitat. In response to the petition, we sent a letter to the petitioner dated January 11, 2008, stating that we had secured funding and that we anticipated making an initial finding as to whether the petition contained substantial information indicating that listing the ashy storm-petrel may be warranted in Fiscal Year 2008. On May 15, 2008, we published a 90-day petition finding (73 FR 28080) in which we concluded that the petition provided substantial information indicating that listing of the ashy storm-petrel may be warranted, and we initiated a status review. On August 19, 2009, we announced our 12-month finding (74 FR 41832) in which we found that, after reviewing the best available scientific and commercial information, listing the ashy storm-petrel was not warranted. The Center for Biological Diversity challenged this decision in the District Court of the Northern District of California on October 25, 2010 (*Center for Biological Diversity v. Salazar, et al.*, No. 4:10-CV-4861-DMR (N. D. CA)). This challenge was resolved by a September 16, 2011, Stipulation of Dismissal, based on the September 9, 2011, approval of two settlements in *In re Endangered Species Act Section 4 Deadline Litig.*, Misc. Action No. 10-377 (EGS), MDL Docket No. 2165 (D. D.C.), in which the Service agreed to submit a warranted 12-month finding with a concurrent proposed rule to list the ashy storm-petrel or a not-warranted finding regarding the ashy storm-petrel to the **Federal Register** by the end of Fiscal Year 2013.

At this time, we are soliciting new information on the status of and potential

threats to the ashy storm-petrel. Information submitted in response to our 2009 12-month finding will be considered and need not be resubmitted. We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received as a result of this notice. For more information on the biology, habitat, and range of the ashy storm-petrel, please refer to our previous 12-month finding published in the **Federal Register** on August 19, 2009 (74 FR 41832).

Author

The primary authors of this document are staff of the U.S. Fish and Wildlife Service, Bay-Delta Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: September 5, 2012

Rowan W. Gould

Director, U.S. Fish and Wildlife Service

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